UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

WILLIAM C. BLOOMQUIST,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 02-137-P-H
	)	
TOWN OF BRIDGTON, et al.,	)	
	)	
Defendants	)	

RECOMMENDED DECISION ON THE TOWN OF BRIDGTON'S MOTION FOR SUMMARY JUDGMENT AND ORDER ON MOTION TO STRIKE

In this action William Bloomquist is suing multiple defendants for alleged interference with employee and employer rights, defamation, assault and battery, malicious prosecution, intentional infliction of emotional distress, negligent infliction of emotional distress, and perjury. (Docket No. 1-A.) In this recommended decision I address two motions filed by the Town of Bridgton: a motion for summary judgment (Docket No. 25) and a motion to strike two of Bloomquist's summary judgment exhibits (Docket No. 39). The summary judgment pleading process has clarified that only one count of Bloomquist's complaint pertains to the Town: Bloomquist charges the Town with negligence and negligent infliction of emotional distress because Bridgton police officers did not take co-defendant Scott Floccher into custody on an arrest warrant in time to prevent Floccher from assaulting Bloomquist after a court hearing involving the two.[1] I now **DENY in part** and **GRANT in part** the Town's motion to strike. Additionally, I

[1] In all caution, the Town moved for summary judgment on two additional counts that could be construed as peripherally implicating the Town. (Docket No. 25.) Bloomquist's response addresses only the Count X negligence claim and I take this as a clear indication that this is the only count he presses with respect to the Town. (Docket No. 32.)

recommend that the Court **GRANT** the Town's summary judgment motion. If the courts agrees with this recommended disposition I further recommend that the Court **REMAND** to the state court the remaining counts of this removed complaint.

Events Underlying Bloomquist's Civil Action

As I summarized in my earlier recommended decision for summary judgment on co–defendant Robert Woodward's motion:

> The events underlying this suit turn on the acrimonious relationship between Bloomquist, who resides in Maine, and Scott Floccher and Susan Benfield, who reside in New Hampshire. Bloomquist complains that Floccher and Benfield, along with various other private individuals and public employees, have violated his rights and injured him in a series of interactions. A key event underlying this dispute is a hearing ... on Floccher's harassment complaint against Bloomquist, held in the Bridgton, Maine District Court on April 11, 2001, at which Bloomquist, his employer, attorney Douglas Hendrick, Floccher, and Benfield were present and during which violence erupted and Floccher allegedly assaulted Bloomquist.

Bloomquist v. Town of Bridgton, Civ. No. 02-137-P-H, Slip Op. at 1-2 (D. Me. May, 15, 2003). Bloomquist argues that the Town had a duty to protect Bloomquist from Floccher and it is civilly liable because its police officers failed to do so.

Summary Judgment Standard

The Town is entitled to summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that [it] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is material if its resolution would "affect the outcome of the suit under the governing law," Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986), and the dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party," id. I review the record in the light most favorable to Bloomquist, as the opponent to summary judgment,

and I indulge all reasonable inferences in his favor. See Feliciano De La Cruz v. El Conquistador Resort & Country Club, 218 F.3d 1, 5 (1st Cir. 2000).

One note about this record: in addition to filing a memorandum replying to Bloomquist's response, the Town has filed a "Statement of Additional Material Facts." (Docket No. 38.) I have not considered this pleading or the accompanying affidavit in arriving at my recommended disposition because additional factual volleys (over and beyond the reply statement of facts) by the moving party after the non-movant has had his say is not countenanced by Federal Rule of Civil Procedure 56 or District of Maine Local Rule of Civil Procedure 56. See cf. Martin v. Inhabitants of Biddeford, __ F. Supp. 2d __, 2003 WL 21129796, *2 n.4 (May 16, 2003) (remarking on how mysterious it is that the Local Rule, implemented with the intent of clarifying summary judgment practice, "continues to bedevil lawyers").

Motion to Strike

The Town moves to strike two exhibits, numbers 2 and 3, which Bloomquist has filed in support of his opposition for summary judgment. Exhibit 2, is a January 26, 2001, medical record from the Togus Medical Center concerning Scott Floccher. The Town argues that the medical record is unauthenticated, contains inadmissible double hearsay, and is private, confidential, and privileged information that should not become part of the public record in this case. With respect to the hearsay, Bloomquist utilizes the exhibit only as support for his allegation concerning what the Town's police officers were aware of vis-à-vis Floccher at the relevant time. It is not offered for the truth of the matter asserted. For similar reasons, the objection on authenticity is meritless; Bloomquist need not demonstrate the record's pedigree to rely on it in support of his

assertion that he gave Bridgton police officers the information contained therein. And, regarding the privileged nature of the report, the Town has no standing to assert this privilege; such a privilege, if there is any[2], would be Floccher's to assert.

Exhibit 3 is an April 6, 2001, police incident report. The Town argues that one of the persons referred to in the report is a minor and the record is therefore confidential pursuant to 16 M.R.S.A. § 614(1)(C) and (D). The Town states that in the very least the minor's name and identifying information should be stricken before the exhibit becomes part of the public record. I agree with this latter recommendation and now order Bloomquist to file the exhibit redacted accordingly.

Material Facts

Floccher assaulted Bloomquist after a hearing on Floccher's protection from harassment motion in the Bridgton District Court on April 11, 2001. Earlier in the day, David Lyon, a police officer for the Town of Bridgton, heard that a warrant had been issued for Scott Floccher's arrest. (DSMF ¶¶1,2.) Lyons never saw the warrant and he does not recall who told him about its existence. (Id. ¶ 3.) At this juncture Lyons was not aware of who had issued the warrant but later learned that it had been issued by the Cumberland County Superior Court an April 9, 2001, because Floccher had not appeared for trial. (Id. ¶ 4.) The warrant was not solely directed to the Bridgton Police Department but was directed: "To Any Authorized Law Enforcement Officer." (Id. ¶¶ 5, 6.) Security officers in the Bridgton District Court and employed by the State of Maine would be included in this directive. (Id. ¶ 6.)

[2] The fact that Bloomquist has copies of these records raises some question about how private and confidential these records are.

Lyons had heard a rumor that Floccher was living at the Highland Lake Resort. (DSMF ¶ 7; D.'s Reply SMF ¶ 3.)[3] On April 11, Lyons decided to go to the resort to look for Floccher and he arrived at the resort at approximately 7:45 a.m., near the end of his shift. (Id. ¶ 8.)[4] Lyons asked the resort manager, Robert Woodward, if Floccher was around and the manager told Lyons that Floccher was not there and that he thought Floccher had just left. (Id. ¶ 9.) Lyons, seeing no sign of Floccher, left the resort, and drove back to the Bridgton Police Station. (Id. ¶¶ 10, 11.) Because Lyons was not required in court that day, he finished his shift and left for the day. (Id. ¶ 14.)[5] Lyons did not recall seeing that morning the other Bridgton police officer involved in these events, Bernard King. (Id. ¶¶ 15, 16.)

Officer King is a twenty-six year veteran of the Bridgton Police Department. (Id. ¶ 16.) Prior to April 11, 2001, King appeared in the Bridgton District Court on numerous occasions. (Id. ¶ 17.) On the morning of April 11, 2001, King was unaware that Lyons had earlier been out on patrol seeking to serve an arrest warrant on Floccher. (Id. ¶ 19.) King and Lyons were working on different shifts and King did not speak to or see Lyons that morning; he knew nothing of Lyons's activities. (Id. ¶ 20.)

On the morning of April 11, King received a call from Bridgton District Court Security Officer Eric Bell, a State of Maine (and not a Town of Bridgton) employee, and

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[3] While Bloomquist asserts that he told Lyons on April 6, 2001, that Floccher was living at the Highland Lake Resort (Pl.'s Opp'n. SMF ¶ 7) and that the police department was well aware of his residence prior to April 11 (PSAMF ¶¶ 3,4), the record nowhere supports an assertion that Bloomquist so informed the department of Floccher's residence (Pl.'s Exs. 1,2,3.)

[4] Bloomquist qualifies this statement by alleging that Bloomquist saw Lyons at the resort at 11:15 a.m. that day. (Pl.'s Opp'n. SMF ¶ 8.) Bloomquist also contends that he informed Lyons of the warrant sometime after 11:15 a.m. on April 11, 2001. (Pl.'s Opp'n. SMF ¶ 3.) Without elaboration as to why this is of significance, I am unable to draw a reasonable inference in Bloomquist's favor from this discrepancy between Lyons's times and Bloomquist's times.

[5] Bloomquist denies this allegation stating that it conflicts with his direct observations but does not explain what the conflict is. (Pl.'s Opp'n. SMF ¶ 14.)

Bell told King that Floccher was scheduled to appear in the court that morning. (Id. ¶¶ 21, 22, 23.) Bell told King that a warrant had been issued for Floccher's arrest. (Id. ¶ 24.) It was King's understanding, based on his experience as a Bridgton police officer and his familiarity with the Bridgton District Court, that once Floccher entered the District Court the court officers had the authority to arrest Floccher and that they would then turn him over to the Bridgton police. (Id. ¶ 25.) The Bridgton Police Station is on the first floor in the same municipal building as the Bridgton District Court, which is on the second floor. (Id. ¶¶ 12, 13.) King went upstairs to the courthouse lobby and saw Floccher entering the courtroom. (Id. ¶ 26.)[6]

The courtroom and the courtroom lobby are patrolled by State court security officers who are authorized to serve a warrant and arrest someone. (Id. ¶ 38.) Normally Bridgton police officers would inform the court security officers if the Town knew that a person who was subject to a warrant was in the courtroom (id. ¶ 39); in this case, however, the court security officers already knew of the warrant for Floccher, as they had called King to tell him about it (id. ¶ 40). As a rule, Bridgton police officers do not want to interfere with the presiding judge's docket or disturb the judge and courtroom in a non-emergency situation. (Id. ¶ 41.) If the State's court security officers do not arrest a person on an outstanding warrant, Bridgton police officers will wait until the court's business is concluded and arrest the person as they are leaving the court (id. ¶ 42); the Bridgton police officers do not want to start confrontation in the courtroom, where it is often crowded and there are adverse parties who are emotionally charged (id. ¶ 43).

[6] Bloomquist denies this factual assertion (Pl.'s Opp'n. SMF ¶ 26), but proffers neither explanation nor record support for this denial.

Accordingly, it is the Town's practice to let the person to be arrested to safely exit the courtroom area before an officer makes an arrest. (Id. ¶ 44.)[7]

The police department has a practice of not arresting people for warrants in the courtroom unless there is a likelihood of violence. (DSMF ¶ 34.) King was not personally aware of any such likelihood in this instance, and no one, including Bloomquist, his attorney, and the court officers, expressed any concerns about this directly to King. (Id. ¶ 35.) Bloomquist was in the court on April 11, 2001 and said nothing to King, or to anyone else in King's presence, regarding any potential for violence. (Id. ¶36.) King was unaware of any pending restraining or protective order that might have been issued against Floccher on Bloomquist's behalf and Bloomquist did not attempt to alert King to the existence of such an order. (Id. ¶ 37.) King did not enter the courtroom but waited outside in the court officer's room for the hearing to conclude. (Id. ¶ 45.)

Because Floccher was in the District Court and within the control of the court officers who were standing nearby and who were aware of the warrant, King did not arrest Floccher. (Id. ¶ 28.)[8] King understood and believed at the time, based on what Bell told him, that the court security officers were going to arrest Floccher (DSMF ¶ 29); the court has its own officers who have jurisdiction over the courthouse (id. ¶ 30). The

[7] Bloomquist argues that in this case the police officers deviated from this practice because the arrangement was that they would arrest Floccher in the courtroom. (Pl.'s Opp'n. SMF ¶¶ 42, 44.) However, the only proposition supported by his record citations is that Court Security Officer Pinnette was of the understanding that the police officers would effect the arrest in the courtroom. (Pl.'s Ex. 6 at 1.) The Bloomquist affidavit and the King incident report (Pl.'s Exs. 1 & 5) do not contradict or qualify the Town statement concerning the general practice for making arrests on warrants upon the exit of the person from the courtroom. Furthermore, the undisputed facts indicate that there was not an actual deviation from the practice from the point of view of the police officers; King was waiting for Floccher to exit the courtroom to take custody of Floccher.

[8] Bloomquist counters with a denial of this assertion, stating that there was no court security officer visible "at the time." (Pl.'s Opp'n SMF ¶ 28.) However, his record support for this denial, Bloomquist's own affidavit, at no point remarks on the visibility or invisibility of the court security officers. (Bloomquist Aff. at 1-3.)

court security officer in charge of the courtroom at the time, James Pinette, was also aware of the warrant for Floccher's arrest. (Id. ¶ 31.) King spoke with Bell while he was in the lobby of the courtroom and, based on this conversation, King understood that either Bell or Pinette was going to detain Floccher after the hearing. (Id. ¶ 32.) King's intention was to take custody of Floccher after the court officers made the arrest and, if the court officers did not arrest Floccher, to detain Floccher after he left the courtroom.[9]

Court security officer Pinette's report on the incident indicates that an arrangement had been made for the Bridgton Police Department to arrest Floccher in the courtroom. (Pl.'s Opp'n SMF ¶ 25.) This report states that it was for the police officers to make the arrest (id. ¶ 29), but at the critical moment no representative of the police department was in the courtroom so Pinette asked Floccher to sit down and advised him of the existing warrant. (Pl.'s Ex. 6 at 1; see also DSMF ¶ 46; Pl.'s Opp'n. SMF ¶ 46.) Floccher nevertheless got up and assaulted Bloomquist. (Pl.'s Ex. 6 at 1; see also DSMF ¶ 48; Pl.'s Opp'n. SMF ¶ 48.) The court security officers then arrested Floccher. (Pl.'s Ex. 6 at 1; see also DSMF ¶ 47; Pl.'s Opp'n. SMF ¶ 47.)

Vis-à-vis notification of the Town concerning Floccher, his violent proclivities, and the warrant, the record supports the following instance of communications concerning Floccher to the Town. Sometime prior to April 11, 2001, but after February 8, 2001, Bloomquist had served upon two police officers (neither King nor Lyons) copies of a psychological evaluation of Floccher containing what Bloomquist characterizes as threatening, homicidal statements to the effect the Floccher thought every day of killing

[9] Bloomquist denies the asseveration about King's conversation with Bell and his intentions concerning the arrest. (Pl.'s Opp'n. SMF ¶ 29, 32, 33.) However his record support for the denial is the incident report of Pinette which does not place into dispute or contradict, as Bloomquist would have it, the content of King's conversation with Bell, King's understanding of what was going to occur, or his intentions. (See Pl.'s Ex. 6.)

his ex-wife and her "lawyer," which Bloomquist understood to be him. (PSAMF ¶¶ 1, 4[10]; Bloomquist Aff. ¶ 1.) This evaluation contains this statement: "[Floccher] states that he is so angry that he thinks about killing his ex-wife or lawyer every day but states he would not act on such because his kids need her." (Pl.'s Ex. 2 at 1-2.) The police department also had on record an offense incident report prepared by Lyons's concerning Floccher's violation of a protection from abuse order vis-à-vis his ex-wife on March 25, 2001. (Pl's. Ex. 3.) Someone in the office of Bloomquist's attorney for the April 11 proceeding notified the court security officers of the existence of the warrant for Floccher's arrest. (PSAMF ¶ 5)[11] On April 11, Bloomquist spoke to Lyons and told him that he had seen Floccher at the resort, and that there was a warrant for his arrest. (Pl.'s Opp'n. SMF ¶ 36; Bloomquist Aff. ¶ 3.) On that date Bloomquist also notified the Bridgton Police Department dispatcher of the outstanding warrant, of Floccher's

[10] The Town denies these two statements of material facts but provides no record citation (D.'s Reply SMF ¶ 1,4) and I deem these statements admitted, but only to the extent that they are supported by record citation. The Town further asserts that while it was aware of Floccher's criminal background it was not informed that there were threats towards Bloomquist. (Id. ¶ 2.) However, they cite to their own additional statement of material facts filed with their reply and, as I already indicated, I do not consider this document to be part of the summary judgment record.

However, Bloomquist has not generated record facts concerning the details of Floccher's prior criminal conduct. His conclusory assertions do not suffice to generate a dispute for summary judgment purposes.

[11] Bloomquist asserts that his attorney informed the court security officer and the police department of the outstanding warrant, Floccher's anticipated appearance in the Bridgton District Court, and of Floccher's violent, homicidal ideation towards Bloomquist. (PSAMF ¶ 5.) The exhibit he sites in support of this assertion is a witness statement by an attorney who employed Bloomquist as an investigator. (Pl.'s Ex. 4.) As it pertains to the assertion it is meant to support, it states: "I was aware that a warrant was outstanding against Mr. Floccher in a Superior Court criminal matter. My office had notified the Court Officer in advance and I noted during the hearing that an additional Court Officer was present." (Id. at 1.) It is not clear whether this supposed notification by the attorney's office was distinct from Bloomquist's own attempts of notification. I will infer, in Bloomquist's favor, that this was an additional notification of the existence of the warrant, but only as to the court security officers. There is no indication in this statement that any police officers were notified by Attorney Hendrick's office.

anticipated presence in the Bridgton Court, and that Floccher had made repeated threats against Bloomquist. (PSAMF ¶ 6; Bloomquist Aff. ¶ 4.)[12]

Discussion

If he is to succeed on either the negligence or negligent infliction of emotional distress aspects of this count against the Town, Bloomquist must demonstrate, among other things, that the Town was negligent, Veilleux v. Nat'l Broad. Co., 206 F.3d 92, 129 (1st Cir. 2000), and to prove negligence he must demonstrate that the Town violated a duty of care towards Bloomquist. See Id.; Bryan R. v. Watchtower Bible & Tract Soc. of N.Y., Inc., 738 A.2d 839, 848 (Me.1999). In this case the only duty identified by Bloomquist is a duty on the part of Lyons and King to have prevented the assault by Floccher by affecting an earlier arrest of Floccher.

With respect to establishing a duty of this ilk in satisfying the negligence prong of a negligence claim, the Restatement (Second) of Torts provides:

> There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless
>
> (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or
>
> (b) a special relation exists between the actor and the other which gives to the other a right to protection.

Restatement (Second) of Torts § 315 (1965). The Maine Supreme Judicial Court sitting as the Law Court, addressing a duty to protect tort claim, has stated: "Only when there is a 'special relationship,' may the actor be found to have a common law duty to prevent

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[12] The Town admits that Bloomquist called the dispatcher, and attempts to qualify the assertion that he told of Floccher's presence in the Bridgton court or of Floccher's homicidal ideation. (D.'s Reply SMF ¶ 6.) However, these qualifications are only supported by the Town's additional statement of material fact that I do not consider to be properly part of the summary judgment record.

For his part, Bloomquist asserts that he observed Floccher entering the Bridgton District Courthouse lobby and directly heard him say "Hi" to Officer King and that "Defendant" did not see any court security officers present at the time. (PSAMF ¶ 7.) However, the Bloomquist Affidavit cited in support for this proposition nowhere mentions this observation. (Bloomquist Aff. 1-3.)

harm to another caused by a third party." Brian R. v. Watchtower Bible and Tract Soc. of New York, Inc., 1999 ME 140, ¶ 14, 738 A.2d 839, 845. "There is simply 'no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless ... a special relation exists between the actor and the other which gives to the other a right to protection." Id. (quoting Restatement (Second) Of Torts § 315(b) (1965)).

A duty of equal magnitude must be established to prevail on the negligent infliction of emotional distress claims. On this score the Maine Law Court has made it clear that there must be either a unique relationship between Bloomquist and the Town or an underlying tort by a Town actor. See Richards v. Town of Eliot, 2001 ME 132, ¶¶ 28,29, 780 A.2d 281, 293; see also Watchtower Bible and Tract Soc. of New York, Inc., 1999 ME 140, ¶ 31, 738 A.2d at 848 ("Only where a particular duty based upon the unique relationship of the parties has been established may a defendant be held responsible, absent some other wrongdoing, for harming the emotional well-being of another.") .

Bloomquist's factual basis for this special or unique relationship is that the Town was well aware of Floccher's potential for violence and his threats towards Bloomquist. Nevertheless, Lyons failed to make an arrest on the warrant prior to the hearings and King chose to arrange for the detention of Floccher by court security officers in the courtroom. Bloomquist also seems to rely on the fact that King allowed these court security officers to operate under the misconception that King would make the arrest in the courtroom. Bloomquist also faults King for waiting in the court officer's room out of

sight of the courtroom and its exit and not being ready to effectuate the arrest per the routine practice. (Pl.'s Opp'n SMF ¶ 45; King Aff. ¶ 6.)

While the Maine Law Court has not addressed the police/victim and special relationship dynamic head-on, other jurisdictions have recognized that as a rule an officer's duty is to the general public rather than to particular individuals and that plaintiffs of this ilk must establish a special relationship between the individual victim and the officer. For instance, in Zelig v. County of Los Angeles, 45 P.3d 1171 (Cal. 2002) the court noted that the general rule is that an individual owes "no duty to control the conduct of another, nor to warn those endangered by such conduct," and that in "most instances, th[is] general rule[] bar[s] recovery when plaintiffs, having suffered injury from third parties who were engaged in criminal activities, claim that their injuries could have been prevented by timely assistance from a law enforcement officer." Id. at 1182-83. See also Ford v. Baltimore City Sheriff's Office, 814 A.2d 127, 140 (Md. 2002) ("We recognize the general rule, as do most courts, that absent a 'special relationship' between police and victim, liability for failure to protect an individual citizen against injury caused by another citizen does not lie against police officers. Rather, the 'duty' owed by the police by virtue of their positions as officers is a duty to protect the public, and the breach of that duty is most properly actionable by the public in the form of criminal prosecution or administrative disposition."); District of Columbia v. Harris, 770 A.2d 82, 87 (D.C. 2001) ("[A]s a general rule, there is no individual right of action for damages against the government for failure to protect a particular citizen from harm caused by the criminal conduct of another."); Benavidez v. San Jose Police Dept., 84 Cal.Rptr.2d 157, 161 (Cal. App. 6 Dist. 1999) ("The police owe duties of care only to the

public at large and, except where they enter into a 'special relationship,' have no duty to offer affirmative assistance to anyone in particular."); Hopkins v. State, 702 P.2d 311, 319 (Kan.1985) ("[A]s a general rule, the duty of a law enforcement officer to preserve the peace is a duty owed to the public at large. Absent some special relationship with or specific duty owed an individual, liability will not lie for damages.").

The only facts related to the relationship between Bloomquist and the police department is that the police department, but not officer King or Lyons, spoke with Bloomquist about Floccher and were served copies of the psychological evaluation of Floccher containing the statement: "[Floccher] states that he is so angry that he thinks about killing his ex-wife or lawyer every day but states he would not act on such because his kids need her." The police department also had on record an offense incident report prepared by Officer Lyons concerning Floccher's non-violent violation of a protection from abuse order vis-à-vis his ex-wife. The department, the dispatcher, and officers Lyons and King were notified of the existence of a warrant for Floccher's arrest for failing to appear at court and were told on April 11, 2001, that Floccher would be in court that afternoon. The arrest warrant was not for a violent offense.[13]

None of the tried and sometimes true hallmarks of a special relationship between police and the victim of a third party's tort are present. Bloomquist was not in the Town's custody at the time of the assault, see Miller v. Szelenyi, 546 A.2d 1013, 1023 (Me.1988) ("While the free citizen on the street has no federal constitutional right to basic medical or other protective services by the State, those people in the State's

[13] Though he claims that further discovery would prove that the Town had a history of tolerating misconduct by Floccher, Bloomquist has not generated a dispute of material fact that would support a conclusion that the Town had a special relationship vis-à-vis Floccher that would require a greater diligence to protect the general public from him.

custody often do have such a right."); see also Restatement (Second) of Torts § 320; he had not agreed to aid the police officers in the performance of their duties, see Brandon ex rel. Estate of Brandon v. County of Richardson, 624 N.W.2d 604, 627-28 (Neb. 2001); the police department did not affirmatively undertake to protect Bloomquist, see Harris, 770 A.2d at 87; there was no statutory or regulatory mandate that they do so, see id.; and the Town was not responsible for Bloomquist's presence in the courtroom on April 11, 2001, Miller, 546 A.2d at 1024.

A few courts have addressed similar arguments by plaintiffs concerning the failure to arrest or execute a warrant and found the claims wanting. One court found no special relationship when a person with an outstanding warrant for his arrest was interviewed by police with knowledge of an outstanding warrant, the police chose not to arrest him, and this individual subsequently killed a twelve-year-old girl when driving while intoxicated. Wongittilin v. State, 36 P.3d 678, 684-85 (Ala. 2001). The court stated: "Imposing a duty to execute a warrant would allow claims in all cases where a person with an outstanding warrant injures another. ... [T]he decision of when to execute an arrest warrant is a fundamental aspect of police discretion." See id. at 684. Another court found an insufficiently special relationship when an officer stopped an inebriated driver, advised him not to continue driving, but did not arrest or detain him, thereby not preempting an accident involving a pedestrian. Ashburn v. Anne Arundel County, 510 A.2d 1078,1083-87 (Md. 1986). This court stated: "In order for a special relationship between police officer and victim to be found, it must be shown that the local government or the police officer affirmatively acted to protect the specific victim or a specific group of individuals like the victim, thereby inducing the victim's specific reliance upon the

police protection." See id. at 1085. And, in Davidson v. City of Westminster, 649 P.2d 894 (Cal. 1982), the California Supreme Court concluded that there was no special relationship between a laundry mat stabbing victim and police who had the premises and stabbing perpetrator under surveillance, even though the plaintiff was, in light of the reason for the surveillance of the suspect, a "reasonably foreseeable victim." Id. at 899-900. The court emphasized, "that the common theme running through the cases in which a special relationship had been found was the voluntary assumption by the public entity or official of a duty toward the injured party." Id. at 900

Drawing all reasonable inferences in Bloomquist's favor, this record does not support a conclusion that there was a special or unique relationship between the Town and Bloomquist. Lyons's and King's involvement in the events leading up to the assault was minimal and really demonstrate an active attempt to serve a warrant (apparently entirely unrelated to Floccher's relationship with Bloomquist) and to effectuate the arrest. No Town employee made a promise to Bloomquist that police officers would protect Bloomquist, in particular, from Floccher.[14] Bloomquist's own actions that day do not indicate that he was highly concerned for his personal safety up until the time that Floccher disobeyed Pinette's order to sit after his informing Floccher of the warrant. At most there was a failure to adequately communicate between King and Pinette that lead to some confusion over which law enforcement agent would effectuate the arrest. There is absolutely no evidence that King lackadaisically allowed events to unfold and was

[14] Bloomquist, in his affidavit, attests that when he called the police dispatcher on April 11, 2001, and told the dispatcher that Floccher would be at the court, that there was a warrant for his arrest, and that he had made repeated threats against Bloomquist, the dispatcher responded: "Don't worry, it's all been arranged." (Bloomquist Aff. ¶ 4.) Bloomquist has not plead this as a statement of material fact and even if he had, under the case law I have independently examined, it would not in and of itself trigger a special relationship.

careless of his duty to effectuate the warrant; rather it is undisputed that King thought that Pinnette had the authority and prerogative to arrest Floccher, that King was attentive to the opportunity presented by the hearing to effectuate, in consort with the court security officers, the mandate of the warrant, and was immediately outside the courtroom ready to take custody of Floccher.[15] There are no inferences I can reasonably draw on Bloomquist's behalf that contravene these undisputed facts. Accordingly, Bloomquist's claims of negligence and negligent infliction of emotional distress against the Town of Bridgton are entirely without merit.

Recommended Remand

In the event that the Court accepts my recommendation on the Town of Bridgton's summary judgment motion, a remand to the state court may well be in order. The remaining defendants to this action are not state actors. Scott Floccher and Susan Benfield, are both currently residing in New Hampshire and Roxanne Hagerman,

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[15] Bloomquist argues that "the Bridgton Police Department made Defendant Floccher into a 'state created' danger by repeatedly allowing him to commit crimes and make threats against others without taking meaningful steps to deter his conduct." (Pl.'s Opp'n. Mot. Summ. J. at 2.) This language is most often associated with a substantive due process claim under the United States Constitution.

With respect to the relationship between the negligence tort claim that Bloomquist presses and the substantive due process analysis, the United States Supreme Court has made it clear that the former is not to be treated as a lesser included offense vis-à-vis the latter:

> It should not be surprising that the constitutional concept of conscience shocking duplicates no traditional category of common-law fault, but rather points clearly away from liability, or clearly toward it, only at the ends of the tort law's spectrum of culpability. Thus, we have made it clear that the due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm.

County of Sacramento v. Lewis, 523 U.S. 833, 848 (1998); see also McClendon v. City of Columbia, 305 F.3d 314, 326 (5th Cir. 2002) ("Negligent infliction of harm by a state actor does not rise to the level of a substantive due process violation, regardless of whether the plaintiff's injury was inflicted directly by a state actor or by a third party.").

I am without doubt that, even if Bloomquist could prevail on a negligence theory against the Town, the facts as he, himself, presents them, taken untested by the Town, could not support a substantive due process claim. See Cummings v. McIntire, Civ. 00-211-PH Slip Op. at 3-5, 2001 WL 121820, *2-3 (D.Me. 2001) (police officer's conduct against an innocent citizen seeking directions – involving forcefully shoving him across the street, swearing, and yelling -- "was unprofessional, deplorable, unjustified and offensive," but it did not "shock the conscience").

operates a business in Bridgton, Maine. Bloomquist is a resident of Maine. The remaining counts are all common law tort claims.

In circumstance in which the district court has dismissed all claims over which it has original jurisdiction, the court has discretion to decline to exercise supplemental jurisdiction over a claim, 28 U.S.C. § 1367(c), but it must reassess its jurisdiction by "engaging in a pragmatic and case-specific evaluation of a variety of considerations that may bear on the issue." Camelio v. American Fed'n, 137 F.3d 666, 672 (1st Cir. 1998). These considerations include "the interests of fairness, judicial economy, convenience, and comity." Id. The First Circuit has stated that "[n]eedless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law." Camelio, 137 F.3d at 672 (citing United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966)). In my opinion, given the nature of the remaining claims and the location of the remaining defendants, that fairness, comity, and convenience are best served by remanding the case to the state court. With respect to judicial economy, this Court has not yet been asked to address any of the substantive issues arising from these claims as they relate to the remaining defendants.

Conclusion

With respect to the motion to strike I **DENY** the motion as to Exhibit 2 and I **GRANT** the motion as to Exhibit 3 and **ORDER** Bloomquist to redact the exhibit as indicated and file the redacted version with the court by no later than **June 10, 2003**. Regarding the motion for summary judgment I recommend that the Court **GRANT** the motion and sua sponte **REMAND** the remaining counts to the state court.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

_____
Margaret J. Kravchuk
U.S. Magistrate Judge

May 29, 2003.

STANDARD, BANGOR

U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 2:02-cv-00137-DBH
Internal Use Only

BLOOMQUIST v. BRIDGTON, TOWN OF, et al
Assigned to: JUDGE D. BROCK HORNBY
Referred to: MAG. JUDGE MARGARET J. KRAVCHUK
Demand: $0
Lead Docket: None
Related Cases: None
Case in other court: Cumberland Superior, 02-cv-250
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 06/20/02
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff ----------		
WILLIAM C BLOOMQUIST	represented by	**WILLIAM C BLOOMQUIST**

		PO BOX 40 CORNISH, ME 04020 625-8078 PRO SE
V.		
Defendant **----------**		
CUMBERLAND, COUNTY OF *TERMINATED: 09/27/2002*	represented by	**JOHN J. WALL, III** MONAGHAN, LEAHY, HOCHADEL & LIBBY P. O. BOX 7046 DTS PORTLAND, ME 04112-7046 774-3906 *TERMINATED: 09/27/2002* *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*
BRIDGTON, TOWN OF	represented by	**MATTHEW TARASEVICH** MOON, MOSS, MCGILL, HAYES & SHAPIRO, P.A. 10 FREE STREET P. O. BOX 7250 PORTLAND, ME 04112-7250 775-6001 *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*
SCOTT D FLOCCHER	represented by	**SCOTT D FLOCCHER** PRO SE **SCOTT D FLOCCHER** SEALED, ME *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*
SUSAN BAXTER BENFIELD	represented by	**SUSAN BAXTER BENFIELD** PRO SE **SUSAN BAXTER BENFIELD** SEALED, ME *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

WOODY WOODWARD	represented by	**WOODY WOODWARD** RR3 BOX 2017 BRIDGTON, ME 04009 PRO SE **THOMAS R. MCKEON** RICHARDSON, WHITMAN, LARGE & BADGER 465 CONGRESS STREET P.O. BOX 9545 PORTLAND, ME 04112-9545 (207) 774-7474 *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*
dba **HIGHLAND LAKE RESORT**		
ROXANNE HAGERMANN	represented by	**ROXANNE HAGERMANN** C/O ROXY'S HAIRPORT 21 MAIN ST BRIDGTON, ME 04009 PRO SE
dba **ROXY'S HAIRPORT**		